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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,663	10/24/2003	Anjali Abhimanyu Patil	Rev 02-26	9947
7590	04/09/2008		EXAMINER	
Revlon Consumer Products Corporation Law Department 237 Park Avenue New York, NY 10017			MERCIER, MELISSA S	
			ART UNIT	PAPER NUMBER
			1615	
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			04/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/692,663	PATIL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MELISSA S. MERCIER	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 December 2007.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 and 15-35 is/are pending in the application.

4a) Of the above claim(s) 4-8 and 23-26 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3, 9-12, 15-22, 27-35 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION****Summary**

Receipt of Applicants Remarks and Amended Claims filed on December 28, 2007 is acknowledged. Claims 1-12 and 15-35 remain pending in this application. Claims 4-8 and 23-26 remain withdrawn. Claims 1-3, 9-12, 15-22, and 27-35 are under prosecution in this application. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 9-12, 15-22, and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loginova et al. (US Patent 6,524,565) in view of Patel et al. (US Patent 6,342,209).

Loginova discloses a cosmetic product for hairs and decorative cosmetic with particular water resistance and wear (transfer) resistance. The product comprises stable mixture of a water-emulsifiable, film-forming agent; a rheology modifier; a pigment; a volatile organic solvent; an oil soluble polymeric film-former; a silicon resin; and a filler (abstract).

One embodiment of the present invention includes a water-resistant cosmetic gel, in which the film-forming agent is selected from one or more of an acrylate copolymer or acrylic or methacrylic acid or an ester thereof (column 1, lines 23-30). Dimethicone and trimethylsiloxy silicate is also disclosed (column 1, lines 47-50). Isoparaffins e.g. isododecane, pentane, hexane, decane or special petroleum distillates etc. are preferably used as aliphatic hydrocarbon solvent

which is not miscible with water are preferred in the stable mixture with gel structure (column 2, lines 61-66). Pigments, pigment mixtures or powders with a pigment-like effect are disclosed, including titanium dioxide, a common sunscreen agent (column 3, lines 16-18). Additional non-polar oils are disclosed as fillers (column 3, lines 32-38).

Loginova does not disclose the second film-forming polymer to be a silicone acrylic copolymer.

Patil discloses cosmetic compositions for application to skin, nails or hair, which contain one or more film forming polymers (column 1, lines 6-8). A wide variety of film forming polymers may be used in the cosmetic or personal care products of the invention. The film-forming polymer must be capable of forming a film on the skin, nails, or hair. The film forming polymers may be natural or synthetic, or a combination of both, and may be in the form of solids, semi-solids, or liquids. The film forming polymer may be neutral or ionic in character, e.g. anionic, cationic, nonionic, or amphoteric (column 2, lines 40-50). Also suitable for use as the film forming polymer in the compositions are copolymers of silicone and various organic, ethylenically unsaturated monomers, for example silicone/acrylate copolymers (column 3, lines 27-37). Additionally, synthetic polymers with the same structure as claimed in the instant claims (column 3, line 64 through column 4, line 16). Dimethicone is disclosed as an antifoaming agent (column 6, lines 23-28). Cyclomethicone and isododecane are also disclosed as suitable oils (column 6, lines 61-68; column 7, lines 32-38). The cosmetic compositions of the invention may be in the form of pigments sticks such as

lipstick, eye shadow sticks, foundation sticks, and the like. Preferably, these sticks are anhydrous (column 11, lines 38-45). Finally, Patel discloses the composition may incorporate one or more particulates, including, for example, bentonite, diatomaceous earth and montmorillonite, which are clays (column 8, lines 30-62).

It has been held that combinations of two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. In re Susi, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-77, 126 USPQ 186, 188 (1960). As the court explained in Crockett, the idea of combining them flows logically from their having been individually taught in prior art. Therefore, since each of the references teaches that film forming polymers, and oils are effective ingredients in cosmetic compositions, it would have been obvious to combine these with the expectation that such a combination would be effective. Thus, combining them flows logically from their having been individually taught in prior art.

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See In re Aller, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various cosmetic compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See *In re Russell*, 439 F.2d 1228 169 USPQ 426(CCPA 1971).

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues the Patel reference requires the use of a surfactant and therefore teaches away from the instant invention. The examiner disagrees. Applicants have used "comprising" language allowing for the inclusion of any number of components regardless of their effect on the composition. Furthermore, it is noted that Applicant has not excluded the use of a surfactant in the instant claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the absence of a surfactant) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

No claims are allowed. All claims are rejected. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/Michael P Woodward/  
Supervisory Patent Examiner, Art  
Unit 1615